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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Thailand: Coup Jettisons Courts

1. In Thailand, the legitimate and democratically elected government of Thailand has been overthrown and the military has usurped power by force. The takeover is a clear and complete violation of the constitution of Thailand. Enormous efforts had been made by the Thai people to develop a democratic constitution. The 1997 constitution was created after years of consultation with all sections of Thai society. One of the preoccupations at the time was to end the entrenched practice of the military overthrowing legitimate governments and taking power. Previously, in Thailand, there had been 18 military coups over a period of 81 years. Thwarting efforts and disappointing expectations, the military has taken over power again.

2. Among the many problems that this takeover by the military has thrown up are the place and the role of courts in Thailand today. Recently, the constitutional court of Thailand forced the resignation of the Prime Minister on the ground that she had violated the constitution in dismissing a particular official. What will the constitutional court do now that the whole constitution has been violated by the military? Will the constitutional court of Thailand declare that the military coup is illegal and therefore the military has no mandate and power to rule? Or has the constitutional council itself been brought to a halt?

3. The Human Rights Council of the United Nations needs to declare that the military coup is illegal and unconstitutional and violative of all liberal democratic principles. The council must demand that power be handed over to the legitimate government and that changes to the government should be brought about via democratic process enshrined in the constitution. The Human rights council must step in to protect the sovereignty of the Thai parliament and the independence of the judiciary.

4. Shortly after usurping power, the military made several declarations. It was declared that those who oppose the military would be brought to trial before military courts. Several offenses were also declared and the military arrested many persons and continues to arrest others. It is expected that there will be large-scale arrests of political leaders, political activists, and civil society activists. In this manner, the military has attributed to itself the powers of arrest, displacing the country's policing system.

5. All criminal justice principles and procedures have been abandoned and thus the very functioning of the criminal justice framework of the country has been paralysed. What is now taking place by way of arrests, detentions, and proposed trials before military courts is not the criminal justice framework as envisaged by the constitution but the operation of an alien and illegal system introduced by the military.

6. Among other things, the military has also declared that it will prosecute persons who campaigned against the operation of *lese majeste* and that the trials against persons arrested for such campaigns will also be brought before the military courts. Thus, the military has taken over the roles of complainant, investigator, prosecutor, judge, and executioner. Even the family of a prisoner, serving a sentence related to the *lese majeste* law, has been served with summons to appear before the military.

7. The net result is that the role of the judiciary in Thailand has been brought to a grinding halt. The people of Thailand no longer enjoy the protection of any of their rights, including the right to be adjudicated by legitimate courts that observe the principles and practices of fair trial.

8. The Human Rights Council needs to give due consideration to the fact that this coup is a violation of all the principles on which United Nations' charter is based. The sovereignty of the nation, to be exercised by a legitimately elected government, has been completely undone. The people's right for protection of human rights, in terms of United Nations conventions to which the Thai government is a party, are all being completely and blatantly violated. This extraordinary situation, in which a people of a country have lost the capacity to resort to their own courts for the protection of their rights, needs to receive the highest consideration from the council. The council needs to come to the rescue of democracy in Thailand. It must intervene to stop all trials by the military courts, and reinstate peoples' right to have all matters of legality and illegality be determined by their legitimate courts.